

August 27, 1940

Mr. L. C. Bishop
State Engineer
Cheyenne, Wyoming.

Dear Mr. Bishop:

This will acknowledge receipt of your letter of August 24, having to do with problems of distribution on Burnt and Henrys forks in Summit and Daggett counties, Utah, and contiguous areas thereto in the State of Wyoming.

As you were advised, Mr. A. G. Burton, Engineer of this office, was assigned to investigate the conditions complained of by you in your letter of August 16, also matters covered by Mr. William McGinnis of Burnt Fork, Wyoming in his letter of the same date.

The waters of these two streams rise in Utah and flow thence into Wyoming, being used in each of the States for irrigation, stock-watering, and domestic purposes. The rights in Wyoming have been determined. That is not the case, however, in Utah. Disputes, therefore, are constantly arising, not only between the irrigators of the respective States, but between the irrigators themselves in each of the States. Each year, therefore, as the natural flow of these streams begins to diminish, trouble arises and is carried on for the balance of the irrigation season, except when the precipitation is such as to make the water supply in excess of the rights involved. Added to this complication and disagreement of rights is the fact that one D. C. Jensen, who is more or less irresponsible from every point of view, takes the water with or without right as he chooses. Both States have attempted to bring him to justice, but to this time failure has resulted and probably will continue until the rights on the Utah side will have been determined by a court. Funds are now available to make a State Engineer's determination of these rights, and we are only waiting for a decision of the Supreme Court to ascertain whether or not the State Engineer can legally proceed with a study of the rights for use of the court in making a decree of the rights on Burnt and Henrys forks, or whether it will be necessary for these people to begin suit in the court and bring in all parties involved, starting a litigation which will probably continue a lifetime, as have many suits of this nature.

It is noted that you say that a suit was filed by the Idaho users requesting the court to determine the rights of the Idaho-Wyoming users on an interstate stream and after six years of litigation without a determination the State Engineer of Wyoming, in the person of yourself, and Mr.

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Spottford, State Engineer of Idaho, made a study of the rights involved and, after a year's trial, the water users of both States asked the court to enter a decree in accordance with the determination of the State Engineers referred to. You ask why this cannot be done on Burnt and Henrys forks - interstate streams of Utah and Wyoming. My answer is that it can be done, and an effort will be made on the part of Utah to make this an accomplished fact. The season is rather late and little can be done this year. Mr. Burton, representing this office, and your Water Commissioner, Mr. Emil C. Grader, have arranged for an equitable distribution of the water for the balance of the year. With this done, it is proposed by this office to await a decision of the Supreme Court as to whether or not a determination of the water referred to can be legally made by the State Engineer according to our statute. If it can be, no time will be lost in presenting the facts to the court to form the basis for a decree. On the other hand, if the statute is not found to be constitutional, I will cooperate with you in every way to bring about an equitable adjustment of the rights of the Utah and Wyoming users on the streams referred to for a trial period of, say, one or two years, preparatory to asking the court for a decree of the rights involved. This has been so successful on 14 streams of the State of Utah before our law for a State Engineer's determination was questioned, there is no reason, if the law be upheld, why it will not work successfully not only on the streams referred to herein but upon Upper Bear river where the rights are precisely the same as they are on Burnt and Henrys forks - undetermined, undjudicated, and undecreed.

I want you to know that I, as well as the water users of streams bordering on Wyoming, appreciate your attitude in an effort to make equitable and just distribution of the waters of interstate streams and to avoid any action which will involve them in endless litigation and ruin.

With kindest personal regards, I remain

Yours very truly,

T. H. Humphreys
STATE ENGINEER.

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